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Bernadette Francine Cattaneo

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re

Bernadette Francine Cattaneo,

Debtor.

Case No. 16-52233

Chapter 7

**MOTION TO AVOID JUDICIAL LIENS
OF HELEN MCABEE AND
INVESTMENT RETRIEVERS ON 2720
ARLINGTON ROAD, HOLLISTER, CA¹**

Hearing

Date: April 18, 2019

Time: 10:30 a.m.

Place: 280 South First Street
Courtroom 3020
San Jose, CA 95113

Bernadette Francine Cattaneo (the “Debtor”) submits this motion (the “Motion”) to avoid the judicial liens of Helen McAbee (“McAbee”) and Investment Retrievers (“IR”) on property commonly known as 2720 Arlington Road, Hollister, CA (the “Arlington Property”). The Debtor

¹ Unless specified otherwise, all chapter and code references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532. “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure and “B.L.R.” references are to the Bankruptcy Local Rules for the Northern District of California. “ECF” references are to the docket in the above-captioned proceeding
MOTION TO AVOID JUDICIAL LIENS ON 2720 ARLINGTON ROAD

1 requests that the Court enter an order pursuant to § 522(f) to avoid the judicial liens of McAbee
2 and IR against the Arlington Property.

3 This Motion is supported by the concurrently filed Declaration of Bernadette Francine
4 Cattaneo in Support of Motion to Avoid Judicial Liens of Helen McAbee and Investment
5 Retrievers on 2720 Arlington Road, Hollister, CA (the “Cattaneo Decl.”), the documents on file
6 in the above-captioned bankruptcy case, and any evidence and arguments that may be presented
7 at hearing.

8 I. FACTUAL BACKGROUNDS

9 The Debtor commenced this by filing a voluntary Chapter 7 petition on August 3, 2016
10 (the “Petition Date”). ECF 1. She received a discharge on January 13, 2017. ECF 18. This case
11 was closed on January 17, 2017, and was reopened on December 26, 2018.²

12 The Debtor co-owns the Arlington Property, which is a single-family home, with her ex-
13 husband Andreas Abramson. Cattaneo Decl. ¶ 2. They each hold a one-half interest in the
14 Arlington Property. *Id.* The Debtor claims a \$10,000 exemption in the Arlington Property. *Id.* at
15 ¶ 3; ECF 27. No objection to the Debtor’s claim of exemption has been filed and the time for
16 such objection has passed. Cattaneo Decl. at ¶ 3; *see* Bankruptcy Rule 4003(b)(1).

17 The Arlington Property secures a claim held by Chase Home Bank in the amount of
18 \$525,398 that was incurred in or about January 2005 and a claim by Wells Fargo Home
19 Mortgage in the amount of \$259,180 that was incurred in or about March 2011. *Id.* at ¶ 4.
20 Together, these secured claims total \$784,578. *Id.*

21 Helen McAbee (“McAbee”) holds a judicial lien secured by the Arlington Property in the
22 amount of \$626,557. *Id.* at ¶ 5. The debt was incurred in or about May 2011 and an abstract of
23 judgment against the Debtor and her ex-husband Andreas Abramson was recorded in San Benito

24
25 ² At the time she filed her bankruptcy case, the Debtor held no interest in real property
26 commonly known as 83 Sanguinetti Court, Copperopolis, CA, 95228 (the “Sanguinetti
27 Property”), pursuant to a decision by a family law court that awarded the entire Sanguinetti
28 Property to her ex-husband, Andreas Abramson. The Debtor now asserts to the family law court
that she should be awarded an interest in the Sanguinetti Property. Based on that assertion, the
Debtor moved to reopen this bankruptcy case, ECF 20, which the Court granted, ECF 21. The
Debtor then filed Amended Schedules A/B, C, and D that reflect her asserted ownership interest
in the Sanguinetti Property. ECF 27.

1 County on May 27, 2011, as instrument number 2011-0004885. *Id.* An amended abstract of
2 judgment in the same amount was recorded in San Benito County on June 27, 2013, as
3 instrument number 2013-0006643. *Id.*

4 Investment Retrievers holds a judicial lien secured by the Arlington Property in the
5 amount of \$123,190.21. *Id.* at ¶ 6. The debt was incurred in or about May 2013 and an abstract of
6 judgment against the Debtor was recorded in San Benito County on July 29, 2016, as instrument
7 number 2016-0007941. *Id.*

8 In the Debtor's opinion, the Arlington Property's value as of the Petition Date was
9 \$700,000. Cattaneo Decl. ¶ 7; *see also* ECF 1, 27.

10 **II. LEGAL ARGUMENT**

11 Section 522(f)(1)(A) provides that a debtor may avoid the fixing of a judicial lien on an
12 interest of the debtor in property to the extent that such lien impairs an exemption of the debtor.
13 Pursuant to § 522(f)(2)(A), a lien impairs an exemption to the extent that the sum of the subject
14 lien, all other liens on the property, and the amount the debtor could claim as an exemption if
15 there were no liens against the property, together exceed the value of the debtor's interest in the
16 property absent any liens. In the case of a property subject to more than one lien, a lien that has
17 been avoided shall not be considered in making the calculation pursuant to § 522(f)(2)(A) with
18 respect to the other liens. § 522(f)(2)(B).

19 The order of lien avoidance matters—"judicial liens are avoided in reverse order until the
20 marginal lien, i.e. the junior lien supported in part by equity, is reached." *In re Meyer*, 373 B.R.
21 84, 88 (B.A.P. 9th Cir. 2007). As such, the impairment and avoidance calculations are applied to
22 the later-recorded and lower-priority IR judgment lien first, and then the earlier-recorded and
23 higher-priority McAbee judgment lien. In the case of a co-owned property, "consensual liens
24 against the entire fee must be netted out before computing the value of a debtor's fractional
25 interest for purposes of avoiding judgment liens on which the co-owner is not liable." *Id.* at 85.

26 As described below, the consensual liens against the Arlington Property exceed the value
27 of the Arlington Property, placing both the IR and McAbee judgment liens underwater. Because
28

1 there is no non-exempt equity to support these judgment liens, the calculations are greatly
2 simplified.

3 A. Complete avoidance of IR and McAbee judgment liens

4 Following the formula prescribed by § 522(f), the Debtor asserts that the consensual liens
5 against the Arlington Property exceed the value of the Arlington Property, leaving no non-
6 exempt equity to which either the IR or McAbee judgment lien may attach.

7	Sum of consensual liens	\$784,578
8	Less, the value of the property	<u>-\$700,000</u>
	Total	-\$84,578

9 Because there is *negative* \$84,578 in equity in the Arlington Property based on the
10 consensual liens (without even considering the Debtor's exemption), further calculations are not
11 necessary. There is no equity to which either the IR or McAbee judgment liens may attach, and
12 both judgment liens may be avoided in their entirety pursuant to § 522(f).

13 **III. CONCLUSION**

14 For the reasons stated above, the Debtor respectfully requests that the Court enter an
15 order that:

- 16 1. Avoids the entirety of the judgment lien of Investment Retrievers that was recorded in
17 San Benito County on July 29, 2016, as instrument number 2016-0007941.
- 18 2. Avoids the entirety of the judgment liens of Helen McAbee that were (1) recorded in
19 San Benito County on June 27, 2013 as instrument number 2013-0006643; and (2)
20 recorded in San Benito County on May 27, 2011, as instrument number 2011-
21 0004885.
- 22 3. Grants such further relief that the Court deems proper in this case.

23
24 DATED: March 4, 2019

FINESTONE HAYES LLP

25
26 /s/ Stephen D. Finestone
27 Stephen D. Finestone
28 Attorney for debtor Bernadette Francine Cattaneo